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Supreme Court, U.S.
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No._____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ENRICA STUART,

Petitioner

vs.

CITY OF RANCHO PALOS VERDES, ET AL.

Respondents

PETITION FOR A WRIT OF CERTORIARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTORIARI

ENRICA STUART
80 Narcissa Dr.
Rancho Palos Verdes
California, 90274
Petitioner In Pro Per
(310)377-7608

66 pp

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QUESTIONS PRESENTED

1. Under Article VI, Section 2 of the U.S. Constitution, can local Rules of Courts be used to limit intrinsic rights protected by the Constitution under Amendments I, V and XIV?

2. Did the Court of Appeals err by denying Petitioners a review and, subsequently, permission to file a notice of an error that was entered into the record by the Court of Appeals and was detrimental to the issues on appeal?

3. Did the California Superior Court err in ignoring the essential and substantive issues in Plaintiffs' Action, thus agreeing, by inference, with issues and Defendants that never stood for trial. Did the Court err in basing its decision solely on the issues submitted by the Plaintiffs in the

consolidated case against their Defendant, even though Petitioners had submitted a motion for bifurcation of issues and had pointed out, in their opening speech, the problem of their divergent issues and Defendants?

4. Can local governments use the issue of litigation to hold secret meetings with private parties in order to devise a "novel idea" that could circumvent the law and deprive others of due process? Can they enter into secret contractual obligations that would allow them to impose unlimited assessments on unsuspecting property owners who were not a party to the lawsuit?

5. What constitutes a "taking of property"? What are the standards and parameters of the "police power" and "clear and present danger", as they

relate to a "taking of property?"

Can a small group of property owners, arbitrarily selected in secrecy and without their knowledge and consent, be held financially responsible for extensive research and massive projects that benefits mostly a public road, a public beach and private persons and interests and, in the process, expose Plaintiffs-Petitioner to the risk of losing their property through exorbitant liens?

----------*----------

PARTIES TO THE PROCEEDINGS

Plaintiffs in Los Angeles Superior Court

Case No. BC 018326:

Enrica Stuart
Charles Stuart
James Pugh
Alyce Snell
Kathleen Snell
Orma Stewart
Catherine Stewart
Craig Ehlenberger
Diana Halderman
Jack Downhill
Robert Bauer
Rea Bauer
Tindara Mollica
Charles Himelwright
William Roberts
Thomas Black
Maria Jacobson
Edith Bustrom (deceased)

Defendants in Los Angeles Superior Court

Case No. BC 018326:

City of Rancho Palos Verdes,
Redevelopment Agency of the City of Rancho Palos Verdes,
County of Los Angeles
Board of Supervisors of the County of Los Angeles.

Plaintiffs in Los Angeles Superior Court

Case No. BC 018276:

Rancho Palos Verdes Resorts, Inc.

Palos Verdes Land Holdings.
(Intervenor)

Defendants in Los Angeles Superior Court

Case No. BC 018276:

County of Los Angeles.

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CITY OF RANCHO PALOS VERDES, ET AL.

Respondents

PETITION FOR A WRIT OF CERTORIARI TO THE CALIFORNIA SUPREME COURT

OPINIONS BELOW

The order of the California Supreme Court is not reported,(App. A). The orders of the Court of Appeals are not reported, (App.B-1-2-3-4-5). The ruling of the Superior Court is not reported, decision in (App.C).

JURISDICTION

The order of the California Supreme Court denying a petition for review was entered on February 23, 1994, (App.A).

The orders of the Appellate Court denying a petition for rehearing and notice of misstatements were entered Dec. 17, 1993, (App.B-1). The decision of the Superior Court was filed June 2nd, 1993, (App.C).

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1257(a). The issues were raised by Complaint, by Writ of Mandamus, by Motions, and at each stage.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

QUOTATIONS ARE IN APPENDIX "D".

The Constitutional provisions at issue in this matter are Article VI,

Amendments,IX, X, Article I, Amendment V, IV XIV of the United States Constitution. (Appendix D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, respectively).

Article I Sections 1, 3, 7, (a) and (b), Sect. 19; Article III, Sect. 1, 3; Article IV, Sections, 1, 8(b) Article VI, Section 13, Article XVII Section. 19 (a) and Article XI of the California Constitution and California Government Code, Section 54950 (Appendix D-9, D-10, D-11, D-12, D-13, D-14, D-15, D-16, D-17, D-18, D-19, respectively)

STATEMENT OF THE CASE

A. INTRODUCTION

Adulteration of intrinsic constitutional rights through abuse of power is a national problem.

Petitioner believes this case is a

classic illustration of the cumulative offenses that can ensue from an initial act of abuse of power perpetrated within a protective safety-net of "political correctness". This abuse arises from the corrupting potentials of easily adulterated legislative and legal decisions. Therefore, an abbreviated chronological description of pertinent events as they unfolded is submitted.

Although it is a noted historical fact that the Supreme Court's decisions, figuratively, tend to swing like a "pendulum", at no time has the Supreme Court challenged the fundamental precepts of the supremacy of the U.S. Constitution in those areas affecting the essential rights and sovereignty of the people in the manner in which it is

being challenged at the local level.

Petitioner noted the concern for "timeliness", expressed by this Court in Lucas v South Carolina Coastal Council, 505 US - 120 L Ed 2d 798,112 S Ct. (1992).

Being In Propria Persona, Petitioner would not presume to know what determines "timeliness". However, on the basis of this case, Petitioner questions how and when the Federal Constitution was abrogated and hope this Court will decide that the time is ripe for a decision that will stop a runaway train of abuses.

Petitioner, admittedly simplistic, is basing her claim and deriving her conclusions from the clear and pristine form by which the Fourteenth Amendment re-states that which is already implied

in Article VI of the Constitution.

Article VI leaves no room for questions regarding the supremacy of the Federal Constitution and its Amendments. It states:

> ". . .the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary, not withstanding" (Appendix D-1)

In comparing Amendment IX with Amendment X, Petitioners noted that the Constitution leaves little doubt as to where sovereignty rests.

Under Amendment IX it is clearly stated that but for those rights enumerated by the Constitution, all other rights are retained by the people.

In addressing State Rights however, under Amendment X, from which the "Police Power" was derived, the

Constitution takes a significantly different approach by using the words,

". . .nor prohibited by it to the States, are reserved to the States respectively, or to the people." (Appendix, D-2, D-3)

Petitioner could find nothing in the Constitution implying that local governments, either through legislative acts, precedents, or "police power", as derived from the various Supreme Court decisions, could declare themselves "sovereign" and claim "sovereign immunity" from constitutional challenges by the people.

In fact, most of this Court's initial decisions relating to Police Power, arose from claims between the States and the Federal Government regarding Article I Section 8, Clause 3,

(The Commerce Clause) and Clause 18, (The Power Clause) of the Constitution (Appendix D-4).

Even Justice Marshall, the father of the "Police Power" evolution, in Gibson v Ogden, 9 Wheaton 1, (February Term, 1894), as well as subsequent decisions, took considerable care to avoid any suggestion of State Supremacy when it referred to the police power of the States vs. constitutional, or natural rights, of the individuals. He carefully side-stepped the issue (Appendix E-5)

In Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934) Chief Justice Hughes, who was more inclined to bend toward State Rights, was concerned about the possibility of abuse of police power. In his decision supporting the

emergency statute of Minnessota, he carefully described the degree of the emergency and chaotic and disastrous, state-wide, conditions which made the State decision a necessity (Appendix E-6)

In this Petitioner's case however, Plaintiffs were denied the right to bring a constitutional complaint against local governments, or argue on constitutional grounds, against the frivolous and abusive use of the police power and the State's, badly written, Emergency Clause.

Should this Court of last resort find this case and its issues relevant and timely, it would give Petitioner its first opportunity to have the case heard and judged on the constitutional issues on which it is based.

B. ANTECEDENT HISTORY OF THE CASE

Plaintiffs-Petitioner in this case are all residents and owners of properties in a semi-rural, gated community known as "Upper Abalone Cove", on the Palos Verdes Peninsula in Southern California.

In 1978, forty-nine people claiming physical and value damages to their properties as a result of a land slide caused by poor drainage, filed a lawsuit against the City of Rancho Palos Verdes, ("City") and the County of Los Angeles ("County") for negligence. The case is known as Horan et al v County of Los Angeles, et al.

The slide was stopped by the installation of dewatering wells paid for with voluntary contributions from neighbors in the Abalone Cove community.

The voluntary effort was later organized into an assessment district known as Abalone Cove Land Slide Abatement District, (ACLAD).

The District encompasses only the Lower and Upper Abalone Cove areas of the gated community and consist of one - hundred and ninety parcels of property.

On November 27, 1984, the City established a Community Redevelopment Agency ("Agency").

In January of 1985, the County filed a complaint to block the Agency.

Soon after the County filed its complaint, members of the City Council approached Horan et al. with a "novel idea" that they claimed would settle all pending law suits, would give the Horan et al. plaintiffs generous cash settlements, issue them below prime rate

loans, and grant the Agency seventy-five million dollars ($75,000,000.00) in tax increments and fifteen million dollars ($15,000,000.00) in cash for use in slide abatement projects demanded by Horan et al. for the Abalone Cove area, as well as work in the adjacent, ancient, active slide area of Portuguese Bend.

A "Panel of Experts", selected jointly by Horan et al., the Agency and the County, would determine and implement the necessary projects.

Horan et al. accepted the proposal and agreed to two separate Settlement Agreements: One, between Horan et. al. and the County, in which Horan et al. would bind the County to a second settlement agreement, a Reimbursement and Settlement Agreement, to be

concluded with the City and the Agency.

The Settlement Agreement between Horan et al. and the County included a commitment by the County to issue an initial ten million dollars ($10,000,000.00) in Bonds for work in the Abalone Cove area, secured by the same properties already being assessed under the, privately organized, Abalone Cove Landslide Abatement District (ACLAD).

The ten million dollars assessment (10,000,000.00) was to be followed by an additional five million dollars ($5,000,000.00), for work to be performed in the ancient, active, land slide area of Portuguese Bend. That area is not included in the ACLAD assessment district, nor in the present County assessment district.

The Settlement Agreement between the County and Horan et al. includes the following conditions:

". . . as a material consideration for Plaintiffs to enter into this Settlement Agreement. . . " (App.F-1).

the County will assure the sale of bonds in accordance with the Reimbursement and Settlement Agreement ("RSA")with the City and Agency (Appendix F-1).

During the interim, between the signing of the Resolution of Intention by the City and the hearings on the assessment district, County advanced one million four-hundred and fifty thousands dollars ($1,450,000.00) to the Agency, to be repaid from the initial ten million dollars ($10,000,000.00) in bonds the County planned to issue. (Appendix, F-3).

There is no question therefore,

that County had committed itself to issue the bonds before holding hearings.

(1) PETITIONER QUESTIONS THE CONSTITUTIONALITY OF THE HORAN ET AL. REIMBURSEMENT AND SETTLEMENT AGREEMENT

During the first and subsequent public hearings held by the Agency to inform the residents of the proposed projects to be undertaken pursuant to the Horan et al. Settlement Agreements with the accompanying issuance of Bonds, Petitioner, through the services of an expert and an attorney, questioned the validity and constitutionality of the Reimbursement and Settlement Agreement.

In accordance with (Kern County Builders, Inc. v. North of the River Municipal Water District, 214 Cal App. 3d 805, 814 (1989), Plaintiffs

questioned the fact that most of the property owners being assessed were not a part of the Horan et al. law suit, nor had they been informed of the Reimbursement and Settlement Agreement before it was an accomplished fact. They also questioned the reliability of the statistics being presented regarding the tax increments, pointing out that they were incorrect and misleading. They asserted that there had been a breach of California Government Code Section 54950 (The Brown Act) as well as the Ist Vth, and XIVth Amendments of the U.S. Constitution (Appendix D-19, D-6, D-8, respectively).

Petitioner believes their claims were supported by: Blake v Eureka, 201 Cal. 643, 258 p. 645 (1927); The People v City of Los Angeles. (1923) Cal. App.

62 p. 782 Civ. No. 4173; Miles Salt Co. v Board of Commissioners, 239 U.S. 36 S Ct. 204 (1970) (Appendix,E-2, E-10, E-9, respectively).

C. PLAINTIFFS BEGIN PROCEEDINGS

Due to assurance by the City, the Agency and Horan, et al. that no liens would be forthcoming from the County's Assessment District and, should said liens be forthcoming the tax increment would cover them, in accordance with Rules of Court and Zattenberg v State Department of Public Health (1974) 43 Cal App3d 657, 662, 118 Cal Rprt. 100, (Appendix, E-11), Plaintiffs waited for the County's notice of liens and the amount thereof before initiating legal action.

The range of the liens, on the ten

million dollars ($10,000,000.00) Assessments was, at the time, for these Plaintiffs, between thirty-thousands ($30,000.00) and ninety-thousands dollars ($90,000.00). In six years, when due and payable the original liens, with interest, will be fifty-five thousands ($55,000.00) to one-hundred and ninety thousands ($190,000.00); with more to come as the experimental slide abatement project continues.

(1) HEARING OF THE BOARD OF SUPERVISORS

At the County's hearing of November 29, 1990, it was noted by Supervisor Mike Antonovich, that over seventy-five percent (75%) of the property owners were protesting the constitutionality, validity and denial of due process of the Horan, et al.

Agreement and its resulting County Assessments. County Counsel pointed out that by declining to implement the Horan et. al Settlement Agreements and issuing the bonds, County would be open to legal action by Horan, et al. His statement was supported by the Attorney for Horan et al. and the former Mayor of Rancho Palos Verdes, Douglas Hinchliffe, who had negotiated the Agreement with Supervisor Deane Dana (Appendix F-4)

On December 4, 1990, Supervisor Dana moved to overrule the protest for "public convenience and necessity" under Article XVII, Section 19 of the California Constitution (Appendix, D-18) It passed without discussion.

It was evident that the decision had already been made behind closed doors.

(2) IN SUPERIOR COURT

On January 3, 1991, Plaintiffs filed two separate Actions under the name of Enrica and Charles Stuart, et al., referred to as, Stuart, et al.

One, a Writ of Mandamus against the County and the Board of Supervisors ("Board") to "set Aside The County Improvement District."

Two, a Constitutional Complaint against the City, the Agency, the Board and the County, "To Determine the Validity of the Proceedings; for Declaratory and Injunctive Relief, the First, Fourth and Fifth Amendments of the Constitution of the United States and Div. 4, Calif. Street & Highway Codes".

On the same day, Rancho Palos Verdes Resorts, Inc. ("RPVR"), filed a

Writ of Mandamus against the County on the Assessment District.

The City responded to Stuart, et al.' actions, the County demurred and responded on all actions.

At the hearing on County's demurrer against Stuart, et al.' Writ of Mandamus, the Court dismissed County's demurrer for lateness.

At the hearing for the Complaint Judge Stephen E. O' Neil, forgave the County's lateness, agreed with County's objection to Plaintiffs' constitutional complaints and County's assertion that the Board of Supervisors, acting in a legislative capacity, was not subject to constitutional challenges and gave Plaintiffs ten days to amend.

County demurred again on the ground that Plaintiffs had a separate Writ of

Mandamus pending against the County and the Complaint contained constitutional allegations involving the City that were not applicable to the County and Standard of Review. City did not appear.

Petitioner, concerned that the case might be dismissed, settled the issues by stipulation. The Writ of Mandamus and the Complaint were consolidated with the Complaint as the leading case. The Complaint was amended to County's satisfaction.

On June 3, 1991, Horan, et al. submitted a "Notice of entry of order granting Plaintiffs' notice of motion and motion to compel enforcement of written settlement agreement" (App.F-2).

County issued the bonds and placed the liens despite pending litigation and RPVR's request for an injunction.

Subsequently County filed for consolidation for all purposes of Stuart, et al.'s Complaint and RPVR's Writ of Mandamus.

Stuart, et al. objected to consolidation for all purposes on the ground of divergent issues with RPVR's Intervenor, Palos Verdes Land Holding ("PVLH"), who had supported the Horan et al. Settlement Agreements at the hearing but entered RPVR's case to obtain a legal assurance that it could develop its property.

Commissioner Murray Gross informed Petitioners that there were no differences between consolidation for all purposes and consolidation for certain issues only, thereby approving the consolidation.

Subsequently, Stuart, et al.,

filed for Severance of certain issues, in accordance with Points and Authorities: (National Elec. Supply Co. v Mt. Diablo Unified School District, (1961) 9, Cal. Rptr. 864, 167, C.A. 2d 418) (Appendix, E-7) (Bratton & Moretti v. Finerman & Son, (1959) 171 Cal App2d 430 435, 340 Ped 673) (Appendix,E-3) and by submitting evidence of conflict with PVLH. Motion was denied.

Just prior to the Final Status Conference, the City filed a Motion for "Summary Judgment or, in the Alternative, a Judgment on the Pleadings" against Stuart, et al., claiming the case did not apply to the City but only to the County Assessment District, other facts being "immaterial".

Judge Charles Lee denied the City's motion on the ground that it had not answered all the issues and allegations, such as ". . . fraud, conspiracy and other triable issues. . . " (Appendix F-5).

During the Mandatory Settlement Conference the City filed the following request and Motions in Limine:

1. It went "Forum Shopping", requesting one of the two litigation judges agreed upon during the Horan Settlement Agreement, as stated in said Agreement.

2. Filed a Motion in Limine to transfer case No. BC 018326 to a Writ and Receivers Department.

3. Filed a Motion in Limine to Try the Case Without a Jury.

4. Filed a Trial Brief Respecting the

Standard of Judicial Review to be Employed in Evaluating the County's Legislative Adoption and Implementation of Improvement District 2651-M.

It became obvious that the Case of Stuart et al. was on its way to being shafted. Therefore, Stuart, et al., filed the following Motions In Limine:

1. "Bifurcation of Issues or a Protective Order of the Court".

2. Motion for "Leave to Amend to Conform to Proof".

3. Objections to "Forum Shopping for Judges".

4. Objection to "City's request for a Writ and Receivers Department" on the ground that the Administrative Record of the hearings by the Board, which the County planned to submit, did not

contain the proceedings of Horan et al., thus denying Stuart et al. a proper trial.

The City objected to all of Stuart, et al. Motions.

1. TRIAL BEGINS

On the first day of trial, Retired Judge Ralph Nutter proceeded to resolve the issues of Motions.

Plaintiffs in Stuart, et al. objected to being pigeonholed into a Standard of Review trial directed solely against the County Assessment District.

It was pointed out to the Court that the purpose of the "Motion for Severance of Issues, or a Protective Order of the Court" was to ensure that Stuart, et al. Constitutional Complaints be addressed and the issue of the

validity of Horan et al. be determined.

On the Motion to "Amend the Complaint to Conform to Proof", Stuart et al. stated that it was necessary due to the City's various Motions and assertions of not being the party to the Action, having been brought into it with "immaterial facts". Consequently Petitioners wished to use more direct and specific words to clarify to the City the constitutionally material relevance of these "facts".

The Court resolved the issue of "Motion to Amend" in a trade off with Defendants on the issue of a jury trial.

The Court further resolved the issue of Bifurcation by stating that it had jurisdiction over both scopes of trial, CCP 1085 or CCP 1094.5, with CCP 1085 allowing the Court to review all

records and evidence and address all issues, not only those in the administrative record.

On that note of assurance Stuart, et al. withdrew their motion for bifurcation and request for a jury trial.

Because Plaintiff, Rancho Palos Verdes Resorts, Inc., had filed for Chapter 11 the trial was continued to February 4, 1993.

In its opening remarks, on the day of the trial, Stuart, et al., re-stated that their case went beyond the County Assessment District. Furthermore, if the issue of the Validity and Constitutionality of the Horan et al. Agreements were settled in their favor, the issue of any and all assessment districts enacted pursuant to Horan et

al. would be moot.

After the opening remarks, Petitioner, by prior agreement, allowed the attorneys for RPVR and Intervenor PVLH, to address their case and issues firsts. The attorneys felt that the case of Stuart et al. against the City might, unduly, complicate their more simple case against the County.

On February 5th, due to the absence of the RPVR's Attorney, Judge Ralph Nutter suggested that the case be continued with written, instead of oral, arguments.

At that point the City again asked the Court to dismiss the claim of Stuart, et al. against the City and Horan, et al.. since it did not apply to them or the case at issue. Judge Nutter ordered the City's Attorney to

argue that point in his brief.

The City, in its written arguments, never addressed the allegations and causes of action filed by Stuart, et al., against the City regarding Horan et al., instead, it restricted its argument to a support of the County's position. Nor did Judge Nutter hold the City's attorney to the Court's order to argue the point in his brief.

The Court did not address the issues of constitutionality and validity of Horan, et al., as requested by Petitioner in the Complaint, nor the request for "Declaratory Relief" from any and all liens, present and future, imposed in compliance with the Horan et al. Settlement Agreements.

The City and the Agency, although present at the trial, never stood for

trial on the case against them, consequently, the case of Stuart et al. never came to trial.

Petitioner believes Plaintiffs' allegations are supported by, among others, the following Points and Authority:

Cinmark Inv. Co v. Reichard (1966) 246 Cal App2d 498, 501, 54 Cal Rptr 810) (Appendix, E-4)

(Marina Development Co. v County of Los Angeles (1984) 155 Cal App3d 435, 443, 202 Cal Rptr 377 (Appendix E-8).

The Court, in its final Decision, included an erroneous statement, submitted by the City as a vital supporting argument, that the Horan et al. Agreements were upheld on Appeal. That claim had been rebuffed by Stuart et. al. during opening remarks. County agreed with Stuart, et al. that what went to trial and was upheld, was a

continuation, by Intervenors, of the County's case against the Agency.

A significant point in this case is the fact that, as the trial transcripts reveals, the Judge made a 180-degree turn from the direction of his questions and instructions during oral arguments. Petitioner in her written argument, followed the instructions, which did not address the validity of Horan et al.

The Court's written decision is a combined version of the "proposed decisions" submitted by City and County.

2. IN THE COURT OF APPEALS

Stuart, et al., major concern in approaching the Court of Appeals was how to separate themselves from the RPVR's case against the County.

Stuart, et al. being familiar with the modus operandi of the City

City and its Attorneys, knew how well the shell game had been put together and how futile it was to go against the County's Assessment District.

The only weak spot and true cause of action was the Horan, et al. Settlement and its constitutional issues. This became even more evident by Defendant's constant effort to pigeonhole these Plaintiffs into a case they could control.

On that basis, Stuart, et al. decided to accept the decision of the Court on the County Assessment District and appeal only on the Horan, et al. issues, and so stated in the documents filed with the Court of Appeals. Therefore, in accordance with that decision, before filing the Appeal, Petitioner checked with the Clerk of

Court regarding the issue of consolidation and were told that unless a motion for consolidation was filed, Stuart et. al. would have a separate filing number. Since no motion had been filed Stuart, et al. was given a separate case number.

County however, filed a motion for dismissal of all the cases for tardiness under the Act of 1913, which applied only to the Assessment District.

Petitioner, again called the Court to verify their case was still separate and the County's motion would not involve its case. It was separate.

On November 29, 1993, Petitioner received a letter from the Court of Appeals, addressed to Rancho Palos Verdes Resorts, Inc., stating that County's Motion for Dismissal had been

granted (Appendix B-2)

That was followed by another letter, again addressed to RPVR, stating that: "Both Requests for Judicial Notice--Moot" (Appendix B-3).

The letters were not signed or stamped and since they made little sense Petitioner again called the clerk and again was reassured that the case of Stuart et.al. was filed separately under BO77395, but she had no explanation for the confusion. The clerk, however, agreed that Petitioner should file for a re-hearing as a means of clarifying the issue.

A motion for re-hearing was filed with complete details on the fact that Stuart et al. did not appeal the Court's decision in favor of the County Assessment District, but appealed for a

trial of their separate issues, none of which came under the Act of 1913.

On December 17, 1993, Petitioner received an official order that was even more confusing than the prior one. The order stated that:

". . . The cases were not consolidated in superior court; however, upon receipt of the notices of appeal, this court consolidated the cases number BO77395 and BO77706, with all future filing carrying the case number BO77706 only. . . " (Appendix B-1)

Petitioner concluded that the Court obviously had never read any of the documents filed by Petitioner or would not, by any logical conclusion, have made that statement.

Having concluded that the situation with the Court of Appeals was hopeless, Petitioner decided that it was mandatory that Stuart et al. regain their identity before filing with the California

Supreme Court, particularly since RPVR and Intervenor had filed a motion for dismissal of their case.

Hence, in accordance with California Rules of Court No. 29 (2), Petitioner, on December 27, 1993 filed a Notice of Misstatement. It was accepted for filing, then returned with a letter denying permission to file (App B-5)

3. IN THE SUPREME COURT OF CALIFORNIA .

The brief was submitted to the clerk of the Supreme Court under Stuart et al., with its original Superior Court number, but also mentioning the consolidated number. The clerk refused filing as prepared, stating that it must be listed as Rancho Palos Verdes Resorts, Inc. v County of Los Angeles.

As expected, the case of Stuart et al. was denied a hearing as "Rancho Palos Verdes Rasorts,Inc v County of Los Angeles, et al." (Appendix A)

V

REASONS FOR GRANTING THE PETITION

I

IN CONFLICT WITH ESTABLISHED RULINGS OF THIS COURT OF THE SUPREMACY OF CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW, WITH ABUSE OF DISCRETION.

Article VI, Section 2 of the U.S. Constitution clearly states that the Constitution is the ". . . supreme law of the land. . " and ". . . Judges in every State shall be bound thereby. . ".

And the XIVth Amendment states that ". . .no State shall make or enforce any law which shall abridge the privileges and immunities of a citizen of the Unites States. . ." (Appendix, D-1,D-8).

County Counsel in its demurrers, claimed that the Board of Supervisors was sitting as legislators when they approved the assessment district, therefore that was a legislative act protected by sovereign immunity.

The City claimed the Agency was exercising the "... taxing power of the Sovereign... " and all constitutional allegations in Stuart, et al. should be denied and the Complaint should follow the established Standard of Review format.

First of all the Constitutional allegations in Stuart et al. refer to the secret actions leading to the illegal Horan, et. al. Settlement Agreement and its content.

The Agreements are the antecedent causal factor that created the chain of

events which lead the County into imposing an Assessment District in a manner that resulted in a denial of procedural due process.

Therefore one cannot deny the essential nexus between Horan et al. and all that has, and will, follow from it.

Second, the Federal and State Constitutions are based on a separation of power that clearly defines how a legislative Bill or Statute can be enacted.

Third, nothing in the Federal or California Constitution, nor the Charters of Incorporation of the County, indicates "Sovereign or Legislative" immunity for the County. And Rancho Palos Verdes is not a Chartered City.

In fact, there is nothing indicating that their enactments are any

thing other than "ordinances" or "rules" subject to the General Laws of the State (Appendix D-20).

Article XI, Article III, Section 3, Article IV, Section 1 and Section 8 (b), of the California Constitution are not ambiguous on this issue. Only the Legislature can legislate general laws and it must do so in accordance with the separation of powers and clearly defined rules of procedure. Therefore, only the State Legislature can legislate (Appendix D-13, D-15)

To grant the County Board of Supervisors, or any Municipality, legislative immunity on ordinances is equivalent to granting them the absolute power of enacting Edicts.

Petitioner does not believe this is what was foreseen, or intended, by

Federal or State Constitutions. Instead, the assumption has evolved, by inference, from misconstrued and misapplied legal precedents. Inferences can be challenged.

Defendants are well aware of these legal facts. The real reason for their "immunity" argument was to pigeonhole the Constitutional Complaint of Stuart, et al. into a Standard of Review case and a Writ and Receivers Court in order to avoid questions regarding collusion, conspiracy and abuse of power, inherent in the Horan, et al. Settlement Agreements.

Petitioner believes the following Points of Authority support her claim:

> "Although actions may be taken to promote health and safety, the means adopted to accomplish that promotion must be reasonably appropriate for the purpose"

(Higgins v Santa Monica (1964) 62 Cal2d 24, 30-31, 41 Cal Rptr 396 P2d 41)

II

DECISION IS IN CONFLICT WITH RULES OF COURT, RIGHT TO A FAIR TRIAL, EQUAL PROTECTION OF THE LAW.

The Ist Amendments to the U.S. Constitution clearly state that the people have a right to ". . . petition the Government for redress of grievances. . . " and the XIVth Amendment states that:

". . .no state shall make or enforce any law which shall abridge the privileges and immunities of citizens. . .or deny any person within its jurisdiction the equal protection of the law" (Appendix, D-5, D-8)

Furthermore, since the Complaint of Plaintiffs was not a frivolous one but was an action of last resort to protect their homes, one would assume that the

Courts would not take such a cavalier approach to the issue and would apply due care to ensure that Petitioners be given a proper hearing, particularly when the infringements involved basic constitutional rights and a miscarriage of justice.

Was the charade which took place in the Court of Appeals an error or a clumsy attempt to railroad In Pro Per Petitioners, and thereby protect the Court and the System?

III

OPINION IS IN CONFLICT WITH THE ESTABLISHED RULING OF THIS COURT ON THE RIGHT OF A FAIR TRIAL AND EQUAL PROTECTION OF THE LAW.

The action of the Superior Court makes a mockery of justice. It abated the County and the City in a despicable

shell game that would deny Stuart, et al. a fair trial resulting in a grave miscarriage of justice.

Only a decision from this Court, reasserting the supremacy of the U.S. Constitution and clarifying the much abused term of "legislative immunity" and "police power" can bring honesty and rationality to the Judicial System.

IV

THE ACTIONS TAKEN, WITH ABUSE OF POWER, ARE IN CONFLICT WITH RULES OF THIS COURT, STATE COURTS AND THE RIGHT OF DUE PROCESS, EQUAL PROTECTION, OPEN MEETING LAWS AND RULES OF PROCEDURE.

City, Agency and County, in their implementation of the Horan, et al. Settlement Agreements, which they called "a novel idea," circumvented established rules and laws, at every level of Government.

The principal actors in this plan

had personal vested interests in the outcome of the proposal. Supervisor Dana received over one-hundred and thirty thousands dollars ($130,000.00) in campaign contributions from special interests who would benefit if the public road and surrounding area could be stabilized at the expense of a handful of residents.

Former Mayor Hinchliffe, with whom Mr. Dana negotiated the "novel idea" is a Principal in a Company which is a heavy contributor to Mr. Dana.

Mr. Dana himself uses the public road being stabilized, since he lives in Palos Verdes, and benefits from it.

The Settlement of Horan et al. involved politically ambitious people who wanted a redevelopment agency. Most of all it involved greed that lead to

the irresponsible abuse of poorly defined rules of law and specific parameters for the exercise of the "police power" and the taking of property, under the protective umbrella of legislative immunity.

But what is most relevant, at this time, is the convoluted shell game they were able to construct, in order to protect themselves and their scheme, in case of litigation.

Even if the Settlement Agreement between Horan et al. and the County did not violate the Brown Act, the Reimbursement and Settlement Agreement, tied to Horan, et al. surely did, because it is a public document which involved decisions affecting private property, with binding financial obligations so irresponsibly high it

placed people's property at risk without the owners' knowledge and consent.

A recent report released by the Council on the status of the tax increment admits that it will not be possible for the Agency to pay off the bonds as originally claimed.

Yet, despite that knowledge and its consequences, the City and Agency continue trying to divert more of the cost of the Horan et al. projects on to the same properties, through additional City Assessment, expenses that should have been paid by the revenues of the County bonds.

Is there no end to this insanity and irresponsible behavior?

Are such actions covered by the "police power" and protected by legislative immunity as it is claimed?

We think not. But if they are, shouldn't this Court re-establish a balance between "police power" and the Constitution? A "balance" that was tilted by the good-will "tinkering" of Constitutional Constructionists?

V

DEFINING THE PARAMETERS OF WHAT CONSTITUTES A TAKING OF PROPERTY AND THE PROPER USE OF POLICE POWER AND EMERGENCY POWER IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT, BUT SHOULD BE, ADDRESSED BY THIS COURT IN ORDER TO CONTROL ABUSE.

In Armstrong, et. al. v United States, 364 US 40, 4 L ed 2d 1554, 80 S Ct 1563 (1960) (App.E-1)

this Court decided to constrain some abuses of the "Taking Power" .

Under the Vth and XIVth Amendments the people should not be deprived of property without due process of law, or public property taken for public use without just compensation (App.D-6,D-8).

Of course one might bend semantics to say that no property is being "taken" in this case. And if these extortion victims, when the liens come due cannot pay and their property is foreclosed, Defendants might say "this is not condemnation but a default in payment."

There are people going to prison under criminal law for similar scams.

It would appear to this Petitioner that the Constitutional words "deprived of their property" does not specify any particular method by which they are to be deprived, as long as the result is a loss of property due to public action of any kind.

In six years, property owners, targeted as payers by the Horan et al. Agreements, will face the loss of all, or a substantial part of their property.

And that does not include ten years of anxiety, inability to obtain loans and an infringement on all those rights which the Constitution is committed to protect for its citizens.

And for what reason? So that a Panel of Experts may conduct experiments on slide abatement? Is it not bias and prejudice to target a small group of people with such burden?

It has been sixteen years since the slide occurred; over ten years since it was declared "under control" as a result of private financial efforts through ACLAD; seven years since the Horan et al. Settlement Agreements, and three years since the bonds were issued, yet, except for repairs on the public road and the beach, nothing has been done to implement the "emergency" projects

demanded by the Horan et al. Agreements, demands that will be met with additional assessments. What was the proclaimed "public emergency"?

CONCLUSION

These petitioners have only questions for this Court because only this Court can bring legal order over politically created legal anarchy.

Only this Court can make the landmark decisions that will occupy the vacuum that allows bad laws and precedents to infest the judicial system.

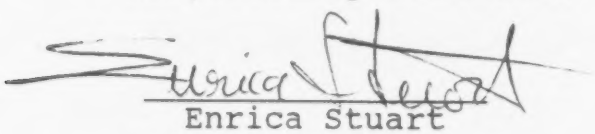
Only this Court can reassure the people that no scheme, no matter how clever, will be permitted to abridge the rights guaranteed by the Federal Constitution.

If this Court cannot sweep out the

cobwebs and let the light in, our judicial system has truly descended to what Roscoe Pound called " . . a holy body of rules . . .and mechanical jurisprudence"

Dated, May, 20, 1994

Respectfully Submitted



Enrica Stuart
Petitioner in Pro Per

Supreme Court, U.S.
FILED

932028 MAY 23 1994

OFFICE OF THE CLERK

No._____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ENRICA STUART,

Petitioner

vs.

CITY OF RANCHO PALOS VERDES, ET AL.

Respondents

APPENDIX TO

PETITION FOR A WRIT OF CERTORIARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

ENRICA STUART
80 Narcissa Dr.
Rancho Palos Verdes
California, 90274
Petitioner In Pro Per
(310)377-7608

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APPENDIX B-1

ORDER OF THE SECOND APPELLATE DISTRICT

DIVISION THREE

RANCHO PALOS VERDES RESORTS, INC. Plaintiff and Appellant v THE COUNTY OF LOS ANGELES et al. Defendants.	B077706 (Sup.Ct.No. BC018276)
CHARLES & ENRICA STUART, et al. Plaintiffs and Appellants VCR. COUNTY OF LOS ANGELES, et al. Defendants and Respondents	(Sup.Ct.No B018326) O R D E R

On the court's own motion and good cause appearing, IT IS HEREBY ORDERED that the order of dismissal dated November 29, 1993, is corrected to reflect both

superior court case numbers: BC018276 and BC018326. The cases were not consolidated in superior court; however, upon receipt of the notices of appeal, this court consolidated the cases numbers: B077395 (BC018326) and B077706 (BC018276), with all future filing carrying the case number B077706 only. The order of November 29, 1993, dismisses the appeals from both superior court case numbers BC018276 and BC018326

MINZ

Acting Presiding Justice

APPENDIX B-2

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 11/29/93

Charles and Enrica Stuart
80 Narcissa Drive
R. Palos Verdes, CA 90274

RE: Rancho Palos Verdes Resorts, Inc.
VCR
Los Angeles, County of
Palos Verdes Land Holdings Company
2 Civil B077706

Los Angeles NO. BC018276

THE COURT:

MOTION TO DISMISS APPEALS OF 7-27-93 & 8-10-93 GRANTED.

APPENDIX B-3

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 11/29/93

Charles and Enrica Stuart
80 Narcissa Drive
R. Palos Verdes, CA. 90274

RE: Rancho Palos Verdes Resorts, Inc.
VCR.
Los Angeles, County of
Palos Verdes Land Holdings Company
2 Civil B077706
Los Angeles NO. BC018276.

THE COURT:

BOTH REQUESTS FOR JUDICIAL NOTICE--

MOOT.

APPENDIX B-4

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 12/17/93

Charles and Enrica Stuart
80 Narcissa Drive
R. Palos Verdes, CA. 90274

RE: Rancho Palos Verdes Resorts, Inc.
VCR.
Los Angeles, County of
Palos Verdes Land Holdings Company
2 Civil B077706
Los Angeles NO. BC018276

THE COURT:

Petition for rehearing denied.

APPENDIX B-5

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 3 DATE: 12/28/93

Charles and Enrica Stuart
80 Narcissa Drive
R. Palos Verdes, CA. 90274

RE: Rancho Palos Verdes Resorts, Inc.
VCR.
Los Angeles, County of
Palos Verdes Land Holdings Company
2 Civil B077706
Los Angeles NO. BC018276

THE COURT:

PERMISSION TO FILE STUARTS' NTC OF MISSTATEMENTS ETC.

DENIED. DOCUMENT RETURNED TO APPELLANTS.

APPENDIX C

STATEMENT OF DECISION OF THE SUPERIOR COURT

DATED June 2, 1993

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RANCHO PALOS VERDES RESORTS, INC., a California Corporation Plaintiffs VCR.	CASE NO. BC018276 (Consolidated with Case No. BC 018326 STATEMENT OF DECISION
THE COUNTY OF LOS ANGELES; and DOES 1 through 50, inclusive, Defendants.	
AND RELATED CROSS ACTIONS.	
CHARLES and ERICA STUART, et al., Plaintiffs, VCR.	

COUNTY OF LOS ANGELES; BOARD)
OF SUPERVISORS OF THE COUNTY)
OF LOS ANGELES; CITY OF)
RANCHO PALOS VERDES;)
REDEVELOPMENT AGENCY OF THE)
CITY OF RANCHO PALOS VERDES,)
et al.,

Defendants.

During the year 1978, the area around the Abalone Cove Beach and Palos Verdes Drive South experienced earth movement as a result of ongoing, substantial and unusually heavy rainfall. Thereafter, dewatering wells were installed to stabilize the land and the Abalone Cove Landslide Abatement District (ACLAD) was formed to assist in this endeavor.

In 1979, a group of homeowners whose properties were located in the Abalone Cove landslide area sued the County of Los Angeles and the City of

Rancho Palos Verdes for damages in the case entitled Horan, et al. v. County of Los Angeles, et al., bearing Case No. C294752. In connection with the above litigation, plaintiffs and the County agreed to jointly appoint a Panel of Experts to determine what was entailed in stabilizing the earth movement in the Abalone Cove area. On December 17, 1984, the Panel of Experts issued its report which outlined the work to be done and concluded that the landslide area could be stabilized by the expenditure of approximately $10,000,000.

In January of 1985, the County of Los Angeles and the Los Angeles Fire Protection District filed an action against the City of Rancho Palos Verdes, its Redevelopment Agency and others

challenging a redevelopment plan which had been adopted vis-a-vis the construction of landslide improvements. The case was captioned County of Los Angeles, et al., v. All Persons Interested in the Matter of the Redevelopment Plan for the Rancho Palos Verdes Redevelopment Project in the City of Rancho Palos Verdes, etc., et al., bearing Case No. C530241.

Both of the foregoing lawsuits were amicably resolved in 1987. In that connection, the Horan plaintiffs were individually compensated in exchange for a dismissal of the lawsuit with prejudice and a full release of all claims. In addition, the county agreed to form and implement a County Improvement District within the Abalone Cove slide area. In order to fund the

stabilization efforts which were outlined by the Panel of Experts, the county also covenanted to sell bonds in the sum of $10,000,000 which would be secured by and payable from special assessments on the property located within the boundaries of the County Improvement District. The boundaries were the same as the ACLAD boundaries, with the only minor difference being that care was taken to insure that the boundary lines did not divide parcels. The referenced special assessments were to be imposed by the county pursuant to applicable law utilizing the "unit assessment formula," but it was also agreed to have a 10-year moratorium on the repayment of the bonds so that the tax increment funds deferred by the county could be used to pay down the

debt. The City of Rancho Palos Verdes agreed to perform the necessary stabilization work and to cooperate with the county as required in the creation of the County Improvement District. The entire settlement was conditioned on obtaining court approval pursuant to Section 877.6 of the California Code of Civil Procedure.

The above settlement was approved by the court and thereafter affirmed on appeal. In the interim, on February 9, 1988, the Board of Supervisors of the County of Los Angeles instituted proceedings under the Improvement Act of 1913 for the construction of landslide abatement improvements designated as County Improvement District No. 2651-M. The City Council of Rancho Palos Verdes adopted resolutions granting consent and

jurisdiction to the County of Los Angeles for the formation of County Improvement District No. 2651-M. Subsequently, on September 18, 1990, the Board of Supervisors of the County of Los Angeles unanimously adopted a Resolution of Intention for the formation of an assessment district and the acquisition of necessary rights of way and the installation of landslide abatement improvements under County Improvement District No. 2651-M. The Board of Supervisors also unanimously adopted a resolution on September 18, 1990 which scheduled November 29, 1990 as the date for a public hearing to consider protests of affected parties to the formation of the proposed improvement district. Notice of public hearing was duly given by posting

notices on all open streets within the proposed improvement district and by publishing the notice twice in an adjudicated newspaper of general circulation serving the area. Prior to the November 29, 1990 protest hearing, and in accordance with the directions of the Board of Supervisors, the Director of Public Works of the County of Los Angels prepared and filed with the Executive Officer-Clerk of the Board of Supervisors the Engineer's Report for the proposed improvement district as required by the Streets and Highways Code. On November 29, 1990, a protest hearing was conducted by the Board of Supervisors and plaintiffs as well as others submitted written protests objecting to the proposed improvement district. A decision by the Board of

supervisors was deferred until December 4, 1990, at which time it voted unanimously to approve the Engineer's Report, the Engineer's method of apportioning and spreading the costs for the improvement district and the Revised Assessment Role for the improvement district. Simultaneously, the Board of Supervisors for the County of Los Angeles voted unanimously to certify as complete and to approve the final environmental impact report which had been prepared relating to the proposed improvement district. The Board of Supervisors then voted unanimously to overrule the written protests and to proceed with the formation of the County Improvement District No. 2651-M.

The justification for the imposition of a special assessment

district is that the property to be assessed will receive a special benefit over and above that received by the general public. City of Baldwin Park v. Stoskus (1972) 8 Cal 3d 563, 568. The benefit to the assessed property must be different, or greater, from that received by the general public, and the assessment must be proportional to the benefit received. Harrison v. Board of Supervisors (1975) 214 Cal.App.3d 852. The special benefit may be the enhancement of the assessed property's value. A general benefit to the public at large from the improvements does not defeat the special assessment as long as such benefit is incidental, and not a primary purpose of the assessment. 70A Am.Jur.3d Section 23. The special benefit need not be direct or immediate,

and is not restricted to a present use of property, but any reasonable future use. 70A Am.Jur.3d Section 24.

The California Supreme Court has cautioned that, in terms of proportionality, assessments may be judicially invalidated only if, "there appears in the record convincing and conclusive evidence that under no conceivable conditions could the several parcels of land have been benefitted in the proportion stated by the assessment." White, supra, at 908-909, quoting from Cutting v. Vaughn, (1920) 182 Cal. 151, 156.

The overriding principle is that the public body's action regarding the establishment of an assessment district is legislative in nature, and not adjudicatory. Therefore, the statutory

scheme gives prospective assessees the right to a public hearing on the question of the assessments, not as litigants but as constituents, to express and lobby for their view before their elected officials.

Plaintiffs and intervenors have asserted that the boundaries of the Improvement District were improper, and tracked the terms of a settlement approval by the Superior Court. They allege that the Board of Supervisors did not exercise discretion as required by law.

In essence, the assessment herein applies to three types of property: land (improved and unimproved); habitable living quarters within the improved property; and public highways.

There is substantial evidence in the record to support the actions by the Board in enacting the Assessment District and adopting the unit assessment approach.

The Board exercised its discretion and approved the boundaries which were selected after extensive expert investigation reports and testing. The county engineer testified at the hearing before the Board. Reliance by the Board on the work of these experts as well as its own engineer was appropriate and proper.

The need for the project was directly stated at paragraph 2.0 of the Report involving the proposed district on page 1:

"Because of recent reactivation of landslides in the Abalone Cove area

and resultant damage and risks to homes and property, an urgency in implementing a stabilization program in the area was created."

The No-Project Alternative was describes as follows: "This alternative will result in continued health and safety risks, damage to homes and property, and obstacles to implementing the City's General Plan and Redevelopment Plan. This alternative was not preferred because of the continuing risk to health and safety and damage to homes and property."

The Report specifies the areas which will benefit: "Those benefitting directly from control of the active Abalone Cove landslide would include the owners of all property

within the boundaries of the active slide. Those benefitting indirectly would include all owners of property within the inactive portion of the ancient landslide complex adjacent to an upsilon from the active Abalone Cove landslide. Judicial invalidation of assessments (is appropriate) only if there appears in the record convincing and conclusive evidence that under no conceivable conditions could the several parcels of land have been benefitted in the proportion stated by the assessment.:

White v. County of San Diego (1980) 26 Cal.3d 897 at page 908.

The Court in Kalashin v. City of Fresno (1973) 35 Cal.App.3d 43 at

page 49 opined: "It is the settled law of this state that when a special assessment based on benefits is challenged by the landowner, it is not a court's function to determine the extent of the benefits. In the absence of fraud, gross injustice or demonstrable mistake,the judicial inquiry is limited to the determination of whether the property assessed would receive some substantial benefit."

See also Cogan v. City of Los Angeles (1973) 34 Cal.App.3d 516 at page 52

A special assessment will not be set aside by the court unless it clearly appears on the face of the record before the legislative body that the assessments are not proportional to

benefits to be bestowed on the properties to be assessed, or that no benefits will accrue to such properties. [Dawson v. County of Los Altos Hills (1976) 16 Cal.3d 676, 686.]

The question before the court is whether the members of the Board of Supervisors believed and voted or if they had no other option, i.e.: whether they had predetermined the issue. The court finds and concludes that the Board did exercise appropriate legislative discretion.

The Board's legal advisor, Mr. Pellman, told the Board that it had discretion to reject the settlement.

Mr. Pellman stated:

"Well, under the terms of the settlement agreement, the Board still has authority to deny this

to deny this particular approach .

(Lines 23-25, page 11, Exhibit B-2)

The record supports the finding that the properties outside of the active landslide are benefitted because they are a part of the ancient landslide complex, which is considered unstable. The record points out that re-activation of the existing landslide could remove support from areas within the ancient landslide complex and expand the slide into that area. Property values within the district boundaries would be jeopardized since the stability of the land is in question.

Under the circumstances and in accordance with the evidence presented, the Board could only approximate the appropriate boundaries within the guidelines submitted by the experts and

the exactness advocated by the plaintiffs was simply unobtainable as well as unrealistic.

It is evident that even inactive landslides must be stabilized to avoid future problems and that the earth movement activity encompasses involved boundaries of previous landslides.

> As one of the Reports stated on page 53: "Unless effective corrective measures are implemented, slide movement will probably continue for a prolonged period of time (several years) and the head of the slide is likely to propagate upsilon into areas not currently involved in the movement. the occurrence and extent of landslides cannot be predicted, all of the ancient landslide complex is

suspect ground, and movement in the active slide area could remove support for surrounding areas in the rest of the ancient landslide complex, enlarging the slide and depressing property values throughout the area."

The court cannot substitute its discretion for that of the Board of Supervisors. Even if some other formula might have been better or more appropriate, the Board of Supervisors' determination must be upheld as long as it was a rational exercise of discretion.

The fact that this whole area is an ancient landslide complex raises natural instability as one possible cause of future problems.

All of the properties are

benefitted by this effort at landslide mitigation. The properties either have suffered damage or are threatened with possible damage. Properties contiguous to landslide areas suffer a substantial loss of value even if they are not damaged in a particular slide.

Geology is not an exact science. The properties included in the assessment district were reasonably determined to be at risk. Predictability of the exact risk is not scientifically possible. The record indicates that slides in one portion of the district could well trigger slides in other portions. It was therefore appropriate to utilize the unit assessment formula.

The attempt to shift the burden of proof to the County relies exclusively

upon the cases of Redevelopment Agency of the City of Huntington Park v. Norm's Slauson (1985) 173 Cal.App.3d 1121 and San Bernardino Flood Control District v. Grabowski (1988) 205 Cal.App.3d 885.

The Norm's Slauson case was decided pursuant to a specific statutory scheme applicable only to condemnation cases. Section 1245.255(b) of the Code of Civil Procedure was the basis for the court in Norm's to shift the burden of proof to the condemning agency. That section refers to the effect given to the resolution of necessity, which is a specific resolution required in condemnation law. It was not formed as some generic legal principle.

Plaintiffs and intervenors bear the heavy burden of proving that the Board of Supervisors had predetermined the

result of the public hearing. They did discuss and consider other alternatives. The existence of the settlement agreement and the good faith settlement order was not sufficient evidence to shift the burden of proof.

The plaintiffs have not proved they were denied a fair hearing on the assessments. Neither have they shown that their properties were not benefitted, nor that the assessment formula was unfair.

Judgment for the defendants and against plaintiffs and intervenor. . .

DATED: June 2, 1993

Ralph Nutter, Judge
Los Angeles Superior Court
(Retired)

APPENDIX D

UNITED STATES CONSTITUTION

D-1. Article VI, Sect. 2 states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or law of any State to the contrary notwithstanding."

D-2. Amendment IX, Sect. 1. states:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

D-3. Amendment X, Sect. 1. states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

D-4. Article 1. Powers Granted to Congress. Section 8, Clause 3: "To regulate Commerce with foreign nations and among the several States and the Indian Tribes"

D-4 (a) Article 1, Sect. 8 Clause 18, (The Police Power)
states: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the

United States, or in any department or officer thereof."

D-5. Amendment I, Section 1.

"Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacefully assemble, and to petition the Government for redress of grievances."

D-6. Amendment V, Section 1.

"No person shall be held to answer for a capital, or otherwise infamous crime . . . nor be deprived of life, liberty, or property, without due process of law; nor shall any private property be taken for public use,

without just compensation."

D-7, Amendment IV, Section 1.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable. . . seizures shall not be violated. . . "

D-8, Amendment XIV, Section 1.

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; or deny any person within its jurisdiction the equal protection of the law."

CALIFORNIA CONSTITUTION

D-9. Article I, Section 3.

"The people have the right. . . to petition the government for redress of grievances. . . "

D-10. Article I, Section 7(a)

"A person may not be deprived of life, liberty and property without due process of law, or denied equal protection of the law;. . . "

D-11. Article I, Section 7(b)

"A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . "

D-12. Article I, Section 19

"Private property may be taken or

damaged for public use only when just compensation by a jury, unless waived, has been paid. . . "

D-13. Article III, Section 1.

"The State of California is an inseparable part of the United States of America and the United States Constitution is the supreme law of the land. . . "

D-14. Section 3.

"The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

D-15. Article IV Section 1.

"The Legislative power of the

State is vested in the California Legislature. . . "

D-16 Article IV, Section 8(b),

"The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title 3 days in each house. . ."

D-17. Article VI, Section 13.

"No judgment should be set aside. . . unless after an examination of the entire cause, including the evidence, the court shall be of the opinion that the **error** complained of has resulted in a miscarriage of justice".

D-18. Article XVII Section 19(a)

" . . . Notwithstanding any provision for debt limitation or

majority protest as in this section provided,. . . if such legislative body by no less than four-fifth vote of all members thereof, find and determines that the public convenience and necessity require such improvement or acquisition, such debt limitation and majority protest provisions shall not apply".

D-19. California Government Code Section 54950 states:

"In enacting this chapter, the Legislature finds and declares that public commissions, board and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be takenopenly and that their deliberations

be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serves them. The people, in delegating authority, do not give their public servants the right to decide what is good for them to know. The people insist on remaining informed so that they will may retain control of the instruments they have created."

D-20. Los Angeles County Charter of Incorporation.

"Section-11: (1),(3),(4) The Board shall provide by ordinance. . . "

"(6) To provide, publish and enforce a complete code of rules not inconsistent with the general laws. . . "

APPENDIX-E

FEDERAL AND STATE CASES

E-1

Armstrong, et al. v U.S. 364 US 40, Led 2d 1554, 80 S Ct 1563 (1960)

"The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Governments from forcing some people alone to bear public burden which, in all fairness and justice should be borne by the public as a whole. . . Cf Thibodo v Unite States(CA9Cal) 187 F2d 219"

E-2

Blake v Eureka, 201 Cal 643, 258 p. 645 (1927)

"A public entity has no authority

to contract with some property owners to assess others".

E-3

Bratton & Moretti v Finerman & Son, (1959) 171 Cal App2d 430, 435 340 Ped 673.

"The possibility of undue prejudice to parties is properly avoided by the discretionary power of the court to sever issue for trial"

E-4

Cinmar Inv. Co. v Reichard,(1966) 246 Cal App2d 498, 501, 54 Cal Rptr 810.

"The Trial Court is not permitted to refuse to assume jurisdiction of declaratory relief action where complaint set forth facts showing that declaratory adjudication is entirely appropriate"

Gibson v Ogden, 9 Wheaton 1, (February Term, 1984)

". . . Since, however, in exercising the power of regulating their purely internal affairs, whether trading or police, the states may sometime enact laws, the validity of which depend on their interfering with and being contrary to an act of Congress passed in pursuance of the constitution, the Court will enter into the inquiry, whether the laws of New York. . . have, in the application of this case, come into collision with an act of Congress and deprived a citizen of a right of which the act entitles him. Should this collision exist, it will be immaterial whether those laws where passed in virtue of a concurrent power. . . or in

virtue of a power to regulate their domestic trade and police. In one case or the other, the act of New York must yield to the law of Congress. . . "

E-6

Hone Building and Loan Association v Blaisdell, 290 U.S. (1934)

"Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon powers granted or reserved. The Constitution was adapted in a period of grave emergency. Its grant of power to the federal government and its limitation of the power of the States was determined in the light of emergency, and they are not altered by emergency. .. .Nevertheless emergency may afford a reason for the extension of power already enjoyed. . .

The constitutional question presented in light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions. . ."

E-7

National Elec. Supply Co. v.Mt Diablo Unified School District (1961) 9, Cal. Rptr. 864, 187, C.A. 2d 418)

". . . not every consolidation requires only one set of findings and one judgment."

E-8

Marina Development Co, v County of Los Angeles (1984) 155 Cal App3d 435, 443, 202 Cal Rptr. 377

"The purpose of declaratory relief is to liquidate uncertainties and controversies which may result in future litigations".

E-9

Miles Salt v Board of Commissioners
239 U.S. 478, 36 S Ct. 204 (1970)

"It is true that the law of the State as written is not attacked, but the law as administered and justified . . . is attacked and it is asserted to be a violation of the Constitution of the United States. The question presented is Federal and the motion to dismiss is denied and the consideration that move a denial of the motion move a decision on the merits of the question. . "

E-10

The People v The City of Los Angeles, (1923) Cal. App. 62.
p. 782 Civ. No. 4173

". . .in other words, the City Council determined the case

without having first heard the evidence. . .Among the finding of the trial court it appears to wit: 'That in passing the Ordinance. . .the City Council was moved . . by the payment and receipt from the Famous Players-Lasky Corporation of the aforesaid sum of $1,000. . .prior to the passage and publication of said ordinance. . .If the payment. . .was not the entire "moving cause', . . .it was at least part and parcel of it".

E-11

Zattenberg v State Department of Public Health, (1974) 43 Call App3d 657,662,118 Cal Rptr.100

"An actual controversy is required to bring a case to trial, relating to the legal rights and duties of the respective parties (CCP Sect.

1060), The controversy must be of a character which admits of specific relief by a judgment. . . Plaintiffs have standing only as they have suffered or are about to suffer a real injury."

F-1

HORAN ET. AL. SETTLEMENT AGREEMENT

"County agrees to assure the sale of bonds or other debt instruments issued to fund landslide abatement work in the Abalone Cove area. The issuance and assurance of sale of such debt instruments shall be in accordance with the Agreement dated June 11, 1987 between County, City and the Rancho Palos Verdes Redevelopment Agency ("Agency") referencing said instruments and shall be subject to the terms set forth therein. The performance of said Agreement by County is a material consideration for plaintiffs to enter into this Settlement Agreement."

PERONA, LANGER & BECK
Lawyers
300 San Antonio Drive
Long Beach, Ca. 90807

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

LAWRENCE AND PATRICIA) CASE HORAN, et. al.	NO. C 294752 (Consolidated with C 327256 and SWC 54217)
Plaintiffs	
vs.	NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL ENFORCEMENT OF WRITTEN SETTLEMENT AGREEMENT
COUNTY OF LOS ANGELES et.al.	
Defendants	

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the Order Granting Plaintiff's Notice of Motion and Motion to Compel Enforcement

of Written Settlement Agreement has been signed by the Honorable Eli Chernow, Judge of the Superior Court and has been entered.

Dated: May 31, 1991 Ronald Beck,
Attorney for
Plaintiffs

F-3

RANCHO PALOS VERDES REDEVELOPMENT AGENCY TAX ALLOCATION AND REVENUE ANTICIPATION PROMISSORY NOTE.

$ 1,450,000 Dated: March 7,1989

The Rancho Palos Verdes Redevelopment Agency (the "AGENCY"), for value received, hereby acknowledges itself indebted to and promises to pay (but only out of Pledged Revenues as hereinafter defined) to the County of Los Angeles (the "County") . . .the sum of One Million Four Hundred and Fifty Thousands Dollars ($1,450,000), or a

lesser sum equal to the disbursements it has actually received from the County, . . .of lawful money of the United States of America, and to pay interest thereon, in like lawful money solely from said Pledged Revenues, . . .This note is a limited obligation of the AGENCY in that the principal thereof and the interest thereon shall be paid solely from and secured by the AGENCY's share of tax increment revenues (as determined pursuant to the Agreement between the AGENCY and the County, dated October 13, 1987), received or to be received from property taxes . . . and **from the proceeds of certain County improvement bonds. . ."**

April 1989

RANCHO PALOS VERDES
REDEVELOPMENT AGENCY
By Jacki Backarach
Chairman of the Board

BOARD OF SUPERVISOR MEETING OF SEPTEMBER 1990 AND HEARINGS OF NOVEMBER 29, 1990

Board of Supervisor Deane Dana during the September meeting stated:

"Yes I have been involved in this for a year or so now, and working with the City. . .Actually I think it is a wonderful think. . . And I know the City is proceeding to . . .in the Portuguese Bend area, to correct if. **The Abalone Cove area has already been stabilized where the** (inaudible) **drive goes along there, and we are no longer riding over a roller coaster in that particular area** and I would so move for approval. . ." Of the Agreement with the City and the Agency.

County Counsel De Witt Clinton at the September meeting, alluding to the Horan et.al. Agreement stated:

". . . I think the essence of this is we have a potential liability of twenty five to thirty million dollars ($25,000,000.00 to $30,000,000.00) and plaintiffs who have sufficient evidence that they can introduce against it and the opportunity to settle this at a cost of less than four million dollars ($4,000,000.00). And that is the square with relation to the people who have sued us"

County Counsel Mr. Pelman at the November Hearings Stated:

". . .the Assessment District is the **final** component of a settlement that was entered into by the Board in 1987.

Under the terms of the contract the County agreed . . . to make available certain funds for the rehabilitation of those properties. . . The settlement, at the same time, resolved a law suit between the County and the Redevelopment Agency. . .Under the terms of this Settlement Agreement the Board still has the authority to deny **this particular** approach. . .but that would affect the overall arrangement that has been entered into in 1987 . . .and we would have to renegotiate. . .or perhaps, go to trial"

November Hearing exchange between Mr. Ronald Beck, Supervisor Mike Antonovich and Supervisor Kenneth Hahn.

Supervisor Hahn: "

Mr. Beck I am amazed at the

testimony I heard this morning. . .that you would rather do something different than take money in this case"

Mr. Beck's response:

"Well, I did get something out of this. . .But we did give up our right to go to Court".

Supervisor Antonovich:

"Because it is Christmas and Hanukkah you are donating it to charity; Right?"

The full significance of the exchange is Mr. Beck's remarks: ". . .we gave up our rights to go to Court. . . " The sword over the head of the Supervisor was the deciding factor not "the public necessity and convenience" that was invoked to overrule the majority protest.

F-5

SUPERIOR COURT OF THE COUNTY

OF LOS ANGELES

November 18, 1992

Honorable Charles Lee Judge

Nature of Proceedings:

Motion of Defendant City of Rancho Palos Verdes, Redevelopment Agency of the City of Rancho Palos Verdes for Summary Judgment, or, in the alternative, for judgment on the pleadings.

Denied without prejudice. The moving papers do not inform the court adequately of the cause(s) of action against defendants and how there are no triable issues of material facts as to the cause(s) of action. For example, the moving papers do not inform the court how many cause(s) of action are involved

and what is the nature of same.
Is this a single negligence cause of action, conspiracy to commit fraud, or what?"
